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In re Application	:
Brown, et al.	:
Application No. 09/788,407	: DECISION ON APPLICATION
Filed: February 21, 2001	: FOR PATENT TERM ADJUSTMENT
Atty Docket No. NC 80,124	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT," filed November 11, 2004.¹ Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to seventeen (17) days.

The application for patent term adjustment is GRANTED to the extent indicate herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **nineteen (19) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

¹ This application for patent term adjustment was timely filed, as it was filed after the mailing of the Notice of Allowance and together with the payment of the issue fee.

On July 28, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is zero (0) days.

Applicants specifically state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of zero (0) days based on an adjustment for PTO delay of one hundred twenty-seven (127) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by applicants' delays of sixty-two (62) days and twenty-eight (28) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b), and two hundred ten (210) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. 1.704(c)(7). The PTO delay of 127 days and applicants' delays of 62 and 28 days have been reviewed and found to be correct. The adjustment of 210 days is at issue.

The adjustment of 210 days has been found to be incorrect. A final Office action was mailed on July 16, 2003. Accordingly, pursuant to 37 C.F.R. § 1.704(b), applicants had until October 16, 2003 to file a response. Applicants filed an RCE on November 13, 2003, and were properly assessed delay of 28 days. However, the amendment submitted with the RCE was considered to be non-compliant, and a Notice of Non-Compliant Amendment was mailed on November 21, 2003. Applicants filed a proper amendment on December 1, 2003. Pursuant to 37 C.F.R. § 1.704(c)(7), applicant delay should have run for the period beginning on the day after the date the reply having an omission was filed (November 14, 2003) and ending on the date that the reply or other paper correcting the omission was filed (December 1, 2003). Accordingly, applicant delay with respect to this filing should have been assessed as eighteen (18) days, not two hundred ten (210) days as suggested by the PTO, and not twenty (20) days as suggested by applicants.

In view of the above, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **nineteen (19) days** (127 days of PTO delay, and 108 (62+28+18) days of applicant delay).

The \$200 fee set forth in 37 C.F.R. § 1.18(e) has been charged to Deposit Account No. 50-0281, as authorized.

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to
Cliff Congo, Petitions Attorney, at (571) 272-3207.

A handwritten signature in black ink, appearing to read 'Karin Ferriter' with a stylized flourish at the end.

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen